



DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653-NEW; Docket ID ICEB-2023-0007]

Agency Information Collection Activities; New Information Collection; Comment Request; Non-E-Verify Remote Document Examination Pilot 1

AGENCY: Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) invites the public to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the Federal Register to obtain comments regarding all aspects of the information collection, the categories of respondents, the estimated burden (e.g., the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: All submissions received must include the OMB Control Number 1653-NEW in the body of the correspondence, the agency name and Docket ID ICEB-2023-0007. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number ICEB-2023-0007.

FOR FURTHER INFORMATION CONTACT: Sharon Hageman, Deputy Assistant Director, Office of Regulatory Affairs and Policy, U.S. Immigration and Customs Enforcement, Department of Homeland Security, telephone number 202-732-6960 (This is not a toll-free number. Comments are not accepted via telephone message.)

SUPPLEMENTARY INFORMATION:

Background

Section 274A of the Immigration and Nationality Act (INA), as amended, prohibits the knowing employment of unauthorized individuals and the hiring of individuals without first verifying their employment authorization and identity. Section 274B of the INA prohibits employment discrimination based on citizenship, immigration status, and national origin, in hiring, firing, and during the employment eligibility verification process. All employers must examine the documentation presented by individuals seeking to establish identity and employment authorization for the purpose of completing the Form I-9, Employment Eligibility Verification (Form I-9). On July 25, 2023, DHS published a final rule, *Optional Alternatives to the Physical Document Examination Associated with Employment Eligibility Verification (Form I-9)*. 88 FR 47990. Under the rule, the Secretary of Homeland Security (the Secretary) may, as an optional alternative to the in-person physical document examination (physical examination) method employers have followed as part of the Form I-9 process set forth in current regulations, consistent with applicable law and via notice published in the *Federal Register*, authorize alternative documentation examination procedures. The Secretary may authorize alternative documentation examination procedures with respect to some or all employers as part of a pilot program, or upon a determination that such procedures offer an equivalent level of security, or as a temporary measure to address a public health emergency declared by the Secretary of Health and Human Services (pursuant to Section 319 of the Public Health Service Act) or a national emergency declared by the President (pursuant to Sections 201 and 301 of the National Emergencies Act). To date, the Secretary has authorized one alternative procedure under the rule, upon a determination that such procedure offers an equivalent level of security. 88 FR 47749. This Notice seeks comment on a potential pilot procedure under the rule.

Proposed Pilot

Through the Non-E-Verify Remote Document Examination Pilot 1 (Pilot), ICE seeks to identify the potential effects of a specific Pilot procedure on the security of the employment verification system. ICE will evaluate a range of potential effects on system integrity, (such as error or fraud rates and discrimination, between physical examination of the Form I-9 documents and remote examination pursuant to the Pilot procedure. The Pilot procedure would resemble the authorized alternative procedure identified above (including with respect to remote document inspection, document retention, optionality, and protections against discrimination). The Pilot procedure would not, however, be available to E-Verify employers, because DHS has authorized an alternative procedure involving the use of E-Verify. The Pilot may be open to most employers but limited to employers below a specified size threshold (e.g., 500 employees).

This information collection would involve a form to be completed by employers requesting to participate in the Pilot. ICE would regularly¹ request feedback data (e.g., number of new hires, number of employees who requested to have a physical inspection, challenges associated with the Pilot procedure) from participating employers.

Participating employers would be required to examine and retain electronic copies that are clear and legible of all supporting documentation provided by individuals seeking to establish identity and employment authorization for the Form I-9 process. Employers may be required to undertake other measures to improve the security of the Pilot procedure. For instance, participating employers may be required to undertake fraudulent document detection and anti-discrimination training. In addition, for those employees who work onsite (i.e., at the same physical worksite as a supervisor or the official completing the Form I-9) or in a hybrid capacity, the employer may be prohibited from using the pilot procedure, or provided a timeframe, following the initial remote document

¹ The burden estimate below assumes two requests annually per participating employer.

examination, during which to physically examine the employee's Form I-9 documents and compare such documents to the copies on file.

The INA specifically authorizes DHS, the Immigrant and Employee Rights Section of the Department of Justice's Civil Rights Division, and the Department of Labor to inspect Forms I-9, including any copies of employee documents retained with the corresponding Form I-9.² Pilot participants, like all employers, would be subject to audits and investigations. DHS would monitor and evaluate data and information from ICE audits conducted to assess any measurable impacts to system integrity between the employers that use the alternative procedure and those that continue with physical document inspection.

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering ICEB-2023-0007 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

² See 8 U.S.C. 1324a(b)(3).

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

As part of this feedback, DHS welcomes and will consider input on all aspects of the pilot's potential terms and conditions, as described above.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Collection:* Non-E-Verify Remote Document Examination Pilot 1.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* New ICE Form; ICE.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Respondents will be employers in the public, private, and not-for-profit sectors, who volunteer to participate in the pilot. These employers will submit responses to the New ICE Form. Up to twice a year, ICE may request feedback data (e.g., number of new hires, number of employees who requested to have a physical inspection, challenges associated with the Pilot procedure) from participating employers. A subset of the employers may take undertake fraudulent document training. Finally, employers participating in the Pilot must retain records as stipulated by the terms of the Pilot.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Collection Type	Number of Respondents	Number of Annual Responses per Respondent	Number of Annual Responses	Time per Response (hours)	Average Annual Hours
Questionnaire	100,000	0.333	33,333	0.5	16,667
Feedback Data	100,000	2	200,000	0.5	100,000
Training	50,000	1	50,000	2	100,000
Document Retention	100,000	10	1,000,000	0.083	83,333
Average Annual Hours					300,000

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 300,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collections:* There are no capital costs or operating and maintenance costs associated with this collection of information. The information for this collection may be submitted and retained electronically.

Sharon Hageman,

Deputy Assistant Director,

Office of Regulatory Affairs and Policy, U.S. Immigrations and Customs Enforcement,

Department of Homeland Security.

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